FOR ARGUMENT

(14)

No. 94-1511



# In the Supreme Court of the United States

OCTOBER TERM, 1995

SAMUEL LEWIS, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL., PETITIONERS

*v.*

FLETCHER CASEY, JR., ET AL.

*ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT*

## BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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## QUESTION PRESENTED

Whether the courts below applied the proper legal standards in deciding that the Arizona Department of Corrections violated state prisoners' right of access to the courts.

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## INTEREST OF THE UNITED STATES

This case involves the constitutional right of prisoners to meaningful access to the courts. The Attorney General is responsible for protecting the constitutional rights of prisoners under the Civil Rights of Institutionalized Persons Act, 42 U.S.C. 1997 *et seq.* In addition, the United States Bureau of Prisons operates 81 prisons that may be affected by the Court's decision in this case. The United States has an interest in ensuring that the law regarding access to the courts protects the rights of inmates while taking into account the legitimate concerns of prison authorities and governmental entities. The United States filed amicus curiae briefs in *Hudson* v. *McMillian*, 503 U.S. 1 (1992), *Turner* v. *Safley*, 482 U.S.

78 (1987), and *O'Lone* v. *Estate of Shabazz*, 482 U.S. 342 (1987), each of which concerned the rights of prison inmates and the constitutional obligations of prison officials.

## STATEMENT

1. Inmates incarcerated in the Arizona state prison system filed this class action in 1990 against the Arizona Department of Corrections (ADOC) under 42 U.S.C. 1983. The inmates alleged that the ADOC's state-wide policies and practices violated the inmates' constitutional right of access to the courts. After a three-month bench trial, the district court held that the ADOC had violated the inmates' constitutional right of court access under *Bounds* v. *Smith*, 430 U.S. 817 (1977), and subsequent cases.[1] The constitutional deficiencies identified by the district court fell primarily within two categories: access to court by inmates in segregation, and access by illiterate and non-English speaking inmates.

a. The district court first found that inmates who are segregated from the general prison population for security or disciplinary reasons (known as "lockdown

[1] In prior litigation, the same district court had held that the ADOC's provisions for access to the courts in its Florence Central Unit Facility were constitutionally inadequate. See *Gluth* v. *Kangas*, 773 F. Supp. 1309 (D. Ariz. 1988), aff'd, 951 F.2d 1504 (9th Cir. 1991). In that litigation, the court found that ADOC officials had demonstrated "a callous unwillingness to face the issues," and had engaged in various "diversion tactics," with the result that "[t]he Court was forced to take extraordinary measures to compel the [ADOC] to focus on the merits." 773 F. Supp. at 1312, 1315. At the remedy stage of the litigation, ADOC officials refused to offer a proposed remedy, despite the court's express request that they do so. *Id.* at 1315. The district court's finding of liability, and the remedy that it imposed, were affirmed on appeal.



inmates") "experience severe interference with their access to the courts." Pet. App. 22a.

Most lockdown inmates in Arizona are denied direct physical access to law libraries and must rely on a system of written requests or "kites" in order to obtain legal materials. Pet. App. 21a. The district court found that the ADOC's kite system is ineffectual. Under the kite system, some lockdown inmates are denied all access to legal materials. *Id.* at 22a. Those inmates who are permitted to use the system experience long delays—ranging from several days to several weeks—in receiving library materials or assistance. In addition, certain ADOC facilities impose severe restrictions on the number of books that inmates may borrow at one time, and on the amount of time that legal materials may be retained, with the result that some prisoners are able to borrow only one or two books at a time, and may keep them for no more than 24 hours. *Id.* at 24a. Moreover, some institutions provide access to materials through the kite system only if a lockdown inmate can provide exact citations for the materials requested. *Id.* at 22a.

The district court further found that there is an insufficient number of prisoner "legal assistants"[2] assigned to aid lockdown inmates, that these assistants receive no training from ADOC, and that they are not sufficiently skilled to provide meaningful assistance to lockdown

[2] In the Arizona system, inmate "law clerks" and inmate library staff assist prisoners by providing them with requested materials from the law library stacks; inmate "legal assistants" aid other inmates in drafting pleadings. Pet. App. 28a. Inmate law clerks and legal assistants possess no particular qualifications, and neither receive training in legal research or the drafting of pleadings. *Id.* at 30a. The distinction between the two groups is one of function rather than skills or qualifications.

inmates. Pet. App. 24a, 30a, 44a. In addition, only lockdown inmates with pending litigation or ADOC charges are allowed access to legal assistants (*id.* at 22a), nor can prisoners obtain legal assistance or legal materials until they have been in lockdown for two weeks (*ibid.*).

Observing that "[e]ven lockdown prisoners who are intelligent, literate and legally trained are unable to do legal research under [a] paging system that allows only one or two books at a time every couple of days" (Pet. App. 24a), the district court concluded that the kite system fails to provide meaningful access to legal materials. Although petitioners asserted that the kite system was required by staffing, logistical and security concerns, the court found that, "despite these same concerns," lockdown inmates at some ADOC facilities are allowed physical access to the law library, including direct access to the shelves. *Id.* at 21a-22a. Concluding that petitioners had provided lockdown inmates neither access to an adequate law library nor assistance by persons minimally trained in the law, as required by *Bounds*, the district court held that petitioners' system violated lockdown inmates' constitutional right of access to the courts. *Id.* at 42a.

b. The district court next addressed the question of access to the courts by illiterate and non-English speaking inmates. The court found that such inmates make up a substantial proportion of the ADOC population,[3] and

[3] The court cited studies indicating that 14.5% of the ADOC inmate population is non-English speaking, that 17.2% have reading skills below the sixth grade level, and that 35% have a reading level of seventh grade or below. Pet. App. 25a. The court indicated that trial testimony generally supported the findings of those studies (*ibid.*), but did not make a specific finding as to the number or proportion of functionally illiterate and non-English speaking inmates in the ADOC system.



that their lack of English reading skills prevents them from doing legal research on their own. Pet. App. 25a. The ADOC has a large, monolingual Spanish-speaking population. Bilingual inmates in its facilities frequently lack the language skills necessary to aid non-English speakers. Moreover, many ADOC facilities have no Spanish-speaking legal assistants, law clerks, or library staff. *Id.* at 29a; Tr. 105-106, 128. The evidence showed, in addition, that there is an inadequate number of inmate assistants available to serve prisoners' legal access needs (Tr. 111-112, 124, 258-259), and that assistants who are available often lack sufficient training and skills to aid other inmates (see, *e.g.*, Tr. 105, 111, 129). Some inmates, acting without assistance, had had their cases dismissed with prejudice because of their inadequate English literacy skills, while others had been unable to file legal actions for that reason. Pet. App. 25a. Observing that "even the best law library is of no use to prisoners who are functionally illiterate in English" (*id.* at 43a), the court concluded that the ADOC's system, in which illiterate and non-English speaking inmates "must rely on an inadequate number of inmate clerks with no formalized training or supervision by attorneys * * * fails to comply with the requirements of *Bounds*" (*id.* at 44a).[4]

[4] The district court also determined that the system of law libraries maintained by petitioners failed to provide meaningful court access to general population inmates, and made additional findings regarding the ADOC's provision of legal supplies to indigent inmates, the availability and confidentiality of photocopies, and interference with attorney/client phone calls. This brief does not directly address those findings.

c. Concluding that "[petitioners'] system fails to comply with constitutional standards," the district court determined that injunctive relief was appropriate. Pet. App. 48a. The court appointed a special master "to work with the parties and develop the proper injunctive relief." *Id.* at 48a-49a.[5]

The district court subsequently adopted the remedial plan proposed by the special master. The plan requires petitioners, *inter alia*, to create an effective testing and training program for inmate legal assistants; to maintain "a sufficient number of at least minimally trained prisoner Legal Assistants" (Pet. App. 70a); to take "[p]articular steps * * * to locate and train bilingual prisoners to be Legal Assistants" (*ibid.*); to recruit qualified law librarians and to train inmate law clerks to run and staff prison law libraries; to recruit bilingual staff and inmate volunteers; to maintain and periodically update complete law collections, including self-help materials and regional reporters; to provide an instructional videotape on legal research to all inmates; to expand library hours; and to allow lockdown inmates access to library facilities, absent demonstrated security concerns. *Id.* at 65a-72a.

2. The court of appeals affirmed in pertinent part. The court first observed that, under *Bounds* v. *Smith*, States must "assist inmates in the preparation and filing of meaningful legal papers by providing prisoners with adequate law libraries or adequate assistance from persons trained in the law," 430 U.S. at 828, and that *Bounds* directed district courts to evaluate "as a whole" the system of court access provided by prisons (Pet.

[5] The court appointed the special master who had developed the remedy in the *Gluth* litigation. See note 1, *supra*. The remedial decree adopted in this case closely parallels the relief in *Gluth*. See Pet. App. 49a.



App. 5a (quoting *Bounds*, 430 U.S. at 832)). Applying that standard, the court of appeals concluded that the district court had properly found that petitioners' system of access was constitutionally deficient.

With respect to lockdown inmates, the court of appeals held that, while "prisons may deny inmates physical access to the law library if such access would threaten institutional security" (Pet. App. 6a), petitioners had failed to provide these inmates with adequate library access *or* assistance from persons trained in the law, as required by *Bounds* (*id.* at 7a).

With respect to illiterate and non-English speaking inmates, the court of appeals agreed with the district court that, in the circumstances of this case, the provision of a small number of untrained inmate legal assistants or law clerks[6] did not satisfy *Bounds'* requirement of "meaningful" access. Pet. App. 8a. In doing so, the court rejected petitioners' argument that, by providing a complete law library, it had removed the barriers to litigation erected by imprisonment. *Id.* at 7a-9a. In the court of appeals' view,

> [t]his argument is without merit because [the State] overlooks the fact that the restrictions on a prisoner's liberty attendant to imprisonment prevents [*sic*] the prisoner from enlisting the assistance of his family,

[6] Petitioners maintained a court-ordered training program in their Florence Central Unit Facility as a result of the *Gluth* litigation, see note 1, *supra*, and a limited training program at the Complex law library in Tucson. Pet. App. 30a-31a. After the filing of this action, petitioners promulgated, then rescinded, a plan to provide training in legal research to law clerks and legal assistants system-wide. *Id.* at 31a.

friends, and a myriad of social services and legal aid organizations that would otherwise be available.

*Id.* at 9a.

The court of appeals rejected petitioners' contention that the district court's remedial order constituted an abuse of discretion. Pet. App. 14a. While noting that a remedy "must do no more and no less than correct a particular constitutional violation," the court observed that "a federal court may order relief that the Constitution would not of its own force initially require if such relief is necessary to remedy * * * [that] violation." *Id.* at 13a. In approving the remedy's requirement of law libraries and trained inmate assistants, the court held that, "even though states may choose which of the two components to provide, this is not to say that a court may never order a mixture of [the two]." *Id.* at 14a (internal quotation marks omitted).

The court of appeals also upheld the other major aspects of the injunction,[7] including the requirement that ADOC libraries be staffed by individuals with some "basic knowledge of legal research" (Pet. App. 16a) and maintain current, complete sets of certain necessary materials (*id.* at 15a).

## SUMMARY OF ARGUMENT

I. The right of access to the courts requires corrections officials to afford inmates a meaningful opportunity to present constitutional claims in a judicial forum. That principle requires officials to consider the general character and circumstances of various inmate populations. While most inmates in a prison system may be afforded

[7] The court of appeals vacated and remanded parts of the district court's order that related to the special master's fees, the prison's indigency standard, and photocopying costs. Pet. App. 16a-18a.



meaningful court access through the provision of adequate law libraries, some substantial number of inmates may be incapable—due to restrictions on physical access or inadequate language skills—to utilize library facilities without additional assistance. The Constitution does not require any particular system as a means of dealing with this situation; however, the system utilized by prison officials must, when evaluated as a whole, provide meaningful access to all substantial components of an institution's inmate population. When determining whether the constitutional obligations have been satisfied, a court must afford prison officials deference to take into account their serious security, administrative, and fiscal concerns. In this case, the proportion of inmates in the ADOC system who cannot effectively use that system's law libraries is substantial, and the assistance that is currently available to substantial groups within the population fails to allow them to pursue legal claims. The courts below therefore correctly concluded that petitioners' system of judicial access was constitutionally deficient.

II. The Federal Bureau of Prisons (BOP) maintains a flexible system designed to provide all substantial groups within each BOP institution's inmate population a meaningful opportunity to present their claims in a judicial forum. BOP provides access to inmates through a system of satellite libraries, interlibrary services, and other assistance. Functionally illiterate and non-English speaking inmates have access to literate inmates who can assist them, as well as access to referrals to outside resources, language skills training, and, where possible, staff assistance. In some facilities, outside legal aid programs are used to supplement institutional materials and services. BOP's system of judicial access represents

one constitutional method of serving the legal access needs of a diverse inmate population while addressing important security, administrative, and fiscal concerns.

III. We leave to the parties the fact-specific question whether the district court abused its discretion in ordering the particular remedy at issue here. We note, however, that, in formulating relief in the prison context, courts must consider, on an institution-wide basis, the necessity of eliminating constitutional violations and affording remedies to the victims of unconstitutional conduct in the context of the State's important interest in managing the affairs of its correctional institutions. Absent a history of recalcitrance or undue delay, state officials should be offered the opportunity in the first instance to craft a remedial scheme that meets constitutional standards.

## ARGUMENT

### I. PETITIONERS' SYSTEM FAILS TO AFFORD ADOC INMATES CONSTITUTIONALLY ADEQUATE ACCESS TO THE COURTS

The constitutional right of access requires that prisoners be afforded "a reasonably adequate opportunity to present claimed violations of fundamental constitutional rights to the courts." *Bounds* v. *Smith*, 430 U.S. 817, 825 (1977). Providing that opportunity requires, not only that prison officials eliminate undue barriers to inmate access, but also that they "shoulder affirmative obligations to assure all prisoners meaningful access to the courts." *Id.* at 824. The Court has accordingly invalidated prison regulations prohibiting inmates from assisting each other in preparing habeas corpus petitions, *Johnson* v. *Avery*, 393 U.S. 483 (1969); see also *Wolff* v. *McDonnell*, 418 U.S. 539 (1974) (extending rule of *Avery*



to inmate civil rights actions). It has also prohibited the imposition of filing fees on indigent inmates, see, *e.g.*, *Smith* v. *Bennett*, 365 U.S. 708 (1961); *Burns* v. *Ohio*, 360 U.S. 252 (1959), and required States to provide trial transcripts, see *Long* v. *District Court of Iowa*, 385 U.S. 192 (1966) (per curiam); *Griffin* v. *Illinois*, 351 U.S. 12 (1956), and notarial services and writing materials, see *Bounds* v. *Smith*, 430 U.S. at 824-825, to inmates who are unable to purchase them.

The approach employed in the Court's access cases has been informed and shaped by principles of due process.[8] Because "due process is flexible and calls for such procedural protections as the particular situation demands," *Morrissey* v. *Brewer*, 408 U.S. 471, 481 (1972); see also *Mathews* v. *Eldridge*, 424 U.S. 319, 334 (1976), government must take into account a population's circumstances and abilities. *Goldberg* v. *Kelly*, 397 U.S. 254, 268-269 (1970) (due process requires that procedures be tailored to "the capacities and circumstances of those who are to be heard"); see also *Gagnon* v. *Scarpelli*, 411 U.S. 778, 790-791 (1973); *Lassiter* v. *Department of Social Services*, 452 U.S. 18, 31 (1981). In the prison context, that approach requires consideration of the general limitations and disabilities of each substantial component of an institution's inmate population, see, *e.g.*, *Vitek* v. *Jones*, 445 U.S. 480, 497 (1980) (Powell, J., concurring in part) (inmates facing involuntary transfer to mental hospital

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[8] The Court has described the right of access to the courts as a due process requirement, see *Procunier* v. *Martinez*, 416 U.S. 396, 419 (1974); *Wolff* v. *McDonnell*, 418 U.S. at 579, as an element of equal protection of the laws, see *Pennsylvania* v. *Finley*, 481 U.S. 551, 557 (1987), and as a manifestation of the right to petition the government for the redress of grievances, see *Turner* v. *Safley*, 482 U.S. 78, 84 (1987).

must be provided "a qualified and independent adviser"); *Wolff* v. *McDonnell*, 418 U.S. at 570 (illiterate inmates facing disciplinary proceedings must be allowed assistance from fellow inmates or staff); see also *Gagnon* v. *Scarpelli*, 411 U.S. at 786-787, as well as the relevant security, administrative, and fiscal concerns of the State, see *Mathews* v. *Eldridge*, 424 U.S. at 335 (due process involves a balancing of the private interest in a procedural protection against the governmental interest).

The *Bounds* holding addressed the situation of "inmates able to present their own cases." 430 U.S. at 824. It did not address the kind of assistance necessary to provide court access to inmates who are unable to utilize law libraries and who are therefore unable to research their cases without some other form of assistance. *Ibid.*[9] In determining the type of assistance required for populations with such special needs, we believe that the Court should be guided by the approach that characterizes the due process inquiry and by *Bounds*' admonition that "'meaningful access' to the courts is the touchstone." *Id.* at 823 (quoting *Ross* v. *Moffitt*, 417 U.S. 600, 616 (1974)).

The proper approach to determining whether constitutional obligations have been satisfied should, in our view, incorporate at least two basic principles. First, in implementing the right recognized in *Bounds*, prison authorities must be afforded a considerable degree of flexibility in structuring a system that accommodates each institution's serious security, administrative, and fiscal concerns. The Court has frequently emphasized the importance of "afford[ing] appropriate deference and flexibility to state officials trying to manage a volatile environment." *Sandin* v. *Conner*, 115 S. Ct. 2293, 2299 (1995) (citing *Hewitt* v. *Helms*, 459 U.S. 460, 470-471 (1983); *Jones* v. *North Carolina Prisoners' Labor Union, Inc.*, 433 U.S. 119, 125 (1977)). The concerns facing prison authorities weigh heavily against the imposition of a rigid requirement that a particular system of assistance be adopted. With meaningful court access as the touchstone, prison authorities therefore have "wide discretion" in determining the way in which they will satisfy the access right. See *Murray* v. *Giarratano*, 492 U.S. 1, 14 (1989) (Kennedy, J., concurring in the judgment) (quoting *Bounds* v. *Smith*, 430 U.S. at 833). As the *Bounds* Court repeatedly noted, see 430 U.S. at 828, 830-831, 832, the Constitution does not require that a prison system provide any particular type of assistance, so long as meaningful access is afforded. Consequently, prison authorities may constitutionally choose to provide court access through a variety of means.

Second, the right of access to the courts does not require that institutions maintain a system that guarantees that each inmate will receive assistance specifically designed for his or her particular needs. Rather, the Constitution requires that prison authorities consider the general circumstances and abilities of each institution's inmate population. Where prison officials have established a system that is reasonably calculated to provide court access to all substantial components of an institution's inmate population, minor deficiencies or isolated lapses in the operation of that system will not typically

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[9] Petitioners therefore err in attaching dispositive significance to *Bounds*' use of the disjunctive in requiring "adequate law libraries *or* adequate assistance from persons trained in the law." 430 U.S. at 828 (emphasis added). See Pet. Br. 34. Nothing in *Bounds* remotely suggests that a population of inmates unable to use a library nevertheless is not entitled to assistance beyond provision of a library they cannot use.

rise to the level of a constitutional violation.[10] If prison officials do not offer a structure reasonably calculated to afford a substantial group of inmates a meaningful opportunity to challenge alleged deprivations of constitutional rights, however, additional protections must be instituted.

**A. Court Access By Lockdown Inmates**

The majority of the ADOC's lockdown inmates are required to use an ineffective "kite" system, under which they have no sufficient opportunity to review legal materials or prepare adequate pleadings. Pet. App. 21a-24a. While kite or paging systems are not necessarily invalid, the lower courts have repeatedly found that, standing alone, they have not proved adequate in practice to provide meaningful court access. See, *e.g.*, *DeMallory* v. *Cullen*, 855 F.2d 442, 447 (7th Cir. 1988) (exact-cite paging system, without more, is unconstitutional); *Morrow* v. *Harwell*, 768 F.2d 619, 623 (5th Cir. 1985) (same); *Corgain* v. *Miller*, 708 F.2d 1241, 1248, 1250 (7th Cir. 1983) (same); *United States ex rel. Para-Professional Law Clinic* v. *Kane*, 656 F. Supp. 1099, 1104 (E.D. Pa.) (same), aff'd, 835 F.2d 285 (3d Cir. 1987) (Table), cert. denied, 485 U.S. 993 (1988); see also 2 M. Mushlin & D. Kramer, *Rights of Prisoners* § 11.04, at 27 (2d ed. 1993) ("use of book paging systems as an exclusive mechanism of gaining access to courts has been forbidden"). The district court's findings in this case establish that petitioners' kite system similarly does not provide adequate legal access for lockdown inmates. The court found, *inter alia*, that petitioners' system completely denies some inmates access to legal materials (Pet. App. 22a), imposes insuperable time, quantity, and specificity restrictions on others (*id.* at 22a, 24a), and is plagued by delays of up to several weeks in providing materials (*id.* at 24a).

Petitioners do not dispute the district court's factual findings, but instead contend (Pet. Br. 36) that the restrictions placed by ADOC on lockdown inmates' library access "bear a rational relationship to legitimate State penological interests," and are therefore valid under *Turner* v. *Safley*, 482 U.S. 78 (1987). That contention is incorrect.

*Bounds* does not hold that inmates must be provided direct access to law libraries irrespective of security, administrative, or fiscal concerns; prison authorities should and do have broad discretion in determining the method by which legal access will be provided, based on the conditions existing in a particular institution or facility. See 430 U.S. at 825, 830-832; see also *Toussaint* v. *McCarthy*, 801 F.2d 1080, 1109 (9th Cir. 1986) (prison officials "may preclude physical access [by segregated inmates] if such access would interfere with institutional security"), cert. denied, 481 U.S. 1069 (1987). Accordingly, prisons may satisfy their constitutional obligations under *Bounds* by utilizing "satellite" libraries, see, *e.g.*, *DeMallory* v. *Cullen*, 855 F.2d at 446-448 (approving creation by prison officials of satellite library for use by segregated inmates); *Smith* v. *Bounds*, 538 F.2d 541, 543 & n.1 (4th Cir. 1975) (approving library plan providing for "smaller core libraries" for prisoners in non-punitive segregation),

[10] As discussed below, see pp. 21-23, *infra*, the standard of proof in cases in which an individual inmate alleges that prison authorities have denied him or her judicial access on an isolated or episodic basis (*e.g.*, a prison guard's refusal to transmit a complaint) should differ from the standard applicable in cases such as this one, in which inmates allege a systemic denial of access to the courts. Where an individualized violation is identified, the appropriate remedy will be based on the scope and nature of the violation.

aff'd, 430 U.S. 817 (1977), or by supplementing or replacing incomplete library access with "adequate assistance from persons trained in the law." 430 U.S. at 828.[11] Such assistance, moreover, may be provided in a variety of ways. *Id.* at 830-832. Where prison authorities deny inmates library access for extended periods such as those in this case, however, they must provide some meaningful and effective substitute.

The courts below did not deviate from those principles. See, *e.g.*, Pet. App. 41a-42a (district court opinion) ("The prison may preclude physical [library] access to segregated inmates if such access would interfere with institutional security."); *id.* at 6a (court of appeals opinion) ("[T]he Constitution does not guarantee a prisoner unlimited access to a library and * * * [p]rison officials of necessity must regulate the time, manner, and place in which library facilities are used.") (internal quotation marks omitted). Rather, those courts correctly concluded that petitioners have provided to lockdown inmates neither adequate library access nor an adequate substitute. *Id.* at 42a-43a. Petitioners have not chosen to employ a satellite library system, and their kite system has proved inadequate. The district court expressly found that existing inmate assistants are not sufficiently

[11] See, *e.g.*, *Williams* v. *Leeke*, 584 F.2d 1336, 1339 (4th Cir. 1978) (approving use of a paging system, where the State supplemented that system with state-funded legal counsel or trained legal assistants), cert. denied, 442 U.S. 911 (1979); *Corgain* v. *Miller*, 708 F.2d at 1247-1250 (where State provided legal assistance, access to legal materials could be restricted); *Holt* v. *Pitts*, 702 F.2d 639, 640-641 (6th Cir. 1983) (State may deny physical access to law library to ensure prison security when inmate has access to persons trained in the law); *Nordgren* v. *Milliken*, 762 F.2d 851, 853-855 (10th Cir.) (State provided adequate access to the courts by providing legal assistance to inmates in drafting pleadings), cert. denied, 474 U.S. 1032 (1985).



skilled to provide meaningful aid to lockdown inmates (*id.* at 24a), and that assistants are only made available to lockdown inmates with *pending* cases (*id.* at 22a). Because petitioners' system, when evaluated as a whole, does not compensate for the inadequacy of library access afforded to lockdown inmates, it does not satisfy the State's constitutional obligations.

### B. Court Access By Illiterate And Non-English Speaking Inmates

As a general matter, prison administrators may satisfy literate, English speaking inmates' right of access to the judicial system by providing an adequate law library. See *Bounds* v. *Smith*, 430 U.S. at 830-832. See also *DeMallory* v. *Cullen*, 855 F.2d at 446; *Campbell* v. *Miller*, 787 F.2d 217, 229-230 (7th Cir.), cert. denied, 479 U.S. 1019 (1986); *Morrow* v. *Harwell*, 768 F.2d at 623; *Cepulonis* v. *Fair*, 732 F.2d 1, 6 (1st Cir. 1984). As the Court recognized in *Bounds*, 430 U.S. at 826-827, inmates who are literate in English and have access to an adequate law library are generally capable of raising "serious and legitimate" claims in the courts. An English-literate inmate who claims to have been beaten or arbitrarily punished by correctional personnel, for example, can, with access to "self-help" legal guides and other appropriate materials, file a pleading that states a colorable constitutional claim.[12] Once an inmate has suc-

[12] For example, the inmate petitioner in *Hudson* v. *McMillian*, 503 U.S. 1 (1992) (use of physical force against prisoner may constitute cruel and unusual punishment even where prisoner does not suffer serious injury), proceeded pro se prior to the appointment of counsel by this Court. See *Hudson* v. *McMillian*, 929 F.2d 1014 (5th Cir. 1990). The inmate respondent in *Helling* v. *McKinney*, 113 S. Ct. 2475 (1993) (prisoner stated cause of action under Eighth Amendment for exposure to secondary tobacco smoke), also filed his complaint pro se. See

cessfully initiated litigation, the "less stringent standards" generally applied to pro se pleadings, see *Haines* v. *Kerner*, 404 U.S. 519, 520 (1972) (per curiam), and courts' discretionary authority to appoint counsel pursuant to 28 U.S.C. 1915(d) (civil rights actions) and 18 U.S.C. 3006A(g) (federal habeas corpus actions), help to ensure meaningful access to a judicial forum for the consideration of the inmate's claims. See also *Neitzke* v. *Williams*, 490 U.S. 319, 327-328 (1989) (dismissal of *in forma pauperis* complaints for frivolousness under Section 1915(d) proper only where claim "lacks even an arguable basis in law," or where factual contentions "are clearly baseless").

On the other hand, an inmate who can neither read nor draft basic English language documents is not afforded meaningful access to the judicial process merely because a law library exists at the institution in which the inmate is incarcerated. The courts of appeals have recognized that prison officials do not discharge their constitutional obligations solely by providing books to prisoners who are not able to read them. See, *e.g.*, *Knop* v. *Johnson*, 977 F.2d 996, 1006 (6th Cir. 1992) (for illiterate and semiliterate prisoners, "there can be no meaningful access to the judicial system unless some literate person is available"), cert. denied, 113 S. Ct. 1415 (1993); *Cruz* v. *Hauck*, 627 F.2d 710, 721 (5th Cir. 1980) (same); *Valentine* v. *Beyer*, 850 F.2d 951, 956 (3d Cir. 1988) (same). See also *Battle* v. *Anderson*, 614 F.2d 251, 255-

*McKinney* v. *Anderson*, 924 F.2d 1500, 1502 (9th Cir.), vacated *sub nom. Helling* v. *McKinney*, 502 U.S. 903 (1991). See also *Gideon* v. *Wainwright*, 372 U.S. 335, 337 & n.1 (1963) (noting, in a case recognizing indigent defendants' right to appointed counsel in criminal trials, that petitioner's habeas corpus petition was "signed and apparently prepared by petitioner himself").



256 (10th Cir. 1980) (remanding for further proceedings to determine the level of assistance actually provided to illiterate inmates by inmate writ writers).

As discussed above, the right of access of a literate, English-speaking inmate is generally satisfied by providing the inmate with an adequate law library. In our view, in order to satisfy illiterate or non-English speaking inmates' constitutional right of access, such inmates must be afforded an equivalent level of access. Because books alone do not assist illiterate or non-English speaking inmates, additional modes of language and writing assistance must be available to provide those inmates meaningful access to the courts.[13]

Illiterate inmates' right of access to the courts may be met through the assistance of fellow inmates who are literate. Similarly, where adequate numbers of literate, bilingual inmates exist within an institution, their aid to non-English speaking inmates in preparing legal documents can alone be constitutionally sufficient. In some circumstances, however, inmate assistance alone may not be adequate to provide a substantial population of illiterate or non-English speaking inmates with access to the courts that is equivalent to that of literate, English

[13] Contrary to petitioners' contention (Pet. Br. 7, 34), the requirement that a population of illiterate and non-English speaking inmates be afforded competent lay assistance in preparing legal materials does not constitute "optimal access." We do not understand the court of appeals to have held that prison officials may afford constitutionally adequate judicial access to illiterate and non-English speaking inmates *only* by providing bilingual legal assistants who are trained in the law. The court's central holding, rather, is that the Constitution requires a system that affords substantial groups of illiterate or non-English speaking inmates the same opportunity to prepare and file legal papers as is available to inmates who are sufficiently literate in English to enable them to use petitioners' law libraries.

speaking inmates who have access to a prison law library. This will be true, for example, where (as the district court found in this case) there are insufficient numbers of other prisoners who are literate, available to help, and able to communicate effectively with those who need assistance.

In such circumstances, the Constitution does not require that a prison system provide any particular mode of assistance. For example, in addition to inmate-to-inmate assistance, institutions may adequately address the access needs of illiterate and non-English speaking inmates by making interpreters and readers available in order to translate legal materials into an understandable form and to facilitate the drafting of pleadings. Alternatively, institutions may choose to facilitate contacts by prisoners with legal resources outside the prison, or to arrange with outside organizations to provide legal or paralegal representation (and, where appropriate, translation services) to particular inmate populations. The common practice of supplementing prison law libraries with some form of professional legal counselling or representation[14] is another method of providing constitutionally adequate access to the courts. *Bounds* v. *Smith*, 430 U.S. at 830-831.

In this case, the trial court found that ADOC officials do not provide *any* system of assistance that promises to afford meaningful access to inmates who are unable to use a law library on their own because they do not speak

[14] The *Bounds* Court noted that, at the time of the decision in that case, "[n]early half the States and the District of Columbia provide[d] some degree of professional or quasi-professional legal assistance to prisoners." 430 U.S. at 830-831. See also current Federal Bureau of Prisons regulations, 28 C.F.R. 543.15, providing for the maintenance of legal aid programs funded or approved by the Bureau.



English or because they lack the ability to read and write. Pet. App. 25a, 44a. Although petitioners state (Pet. Br. 8) that non-English speaking inmates "may obtain assistance from bilingual law clerks, legal assistants, staff members or inmate translators," the district court expressly found that the bilingual inmates on whom non-English speaking inmates rely are frequently unable to provide adequate assistance, and that many ADOC facilities have no bilingual legal assistants or law clerks. Pet. App. 29a. The district court further found that the legal assistants and law clerks designated by the ADOC to aid non-English literate prisoners were inadequate in number, and lacked the basic skills necessary, to provide meaningful assistance to those inmates.

There is no indication that the district court's factual findings as to the assistance actually available to illiterate and non-English speaking inmates were clearly erroneous. The court of appeals therefore correctly affirmed the district court's finding that petitioners failed to provide constitutionally adequate court access to those inmates.

### C. Cognizable Injury

Petitioners argue (Pet. Br. 30-31) that the lower courts improperly imposed liability in this case without proof that ADOC policies or practices actually denied inmates access to the courts. That argument is incorrect.

At issue in this case is prisoners' right to "a reasonably adequate opportunity" to present constitutional claims to the courts. *Bounds* v. *Smith*, 430 U.S. at 825. That opportunity is denied, and the right infringed, when prison officials fail to provide an effective system of

judicial access.[15] "'In our adversary legal system, few things can be as prejudicial as the denial of basic legal resources.' When an inmate complains that the basic elements needed to use that system are lacking, 'the complaint carries an inherent allegation of prejudice.'" 2 M. Mushlin & D. Kramer, *supra*, § 11.01, at 11 (quoting *DeMallory* v. *Cullen*, 855 F.2d at 449) (footnote omitted).

Petitioners' contention (Pet. Br. 32) that inmates' rights are violated only when their individual claims are extinguished or dismissed due to lack of assistance is contrary to this Court's access cases. In *Johnson* v. *Avery*, 393 U.S. 483 (1969), for example, the Court invalidated a prison regulation prohibiting inmates from assisting each other in legal matters. The *Avery* Court did not require a showing that uneducated inmates had missed a filing deadline or had had claims dismissed, but instead relied on the district court's finding that, "if [illiterate] prisoners cannot have the assistance of a 'jail-house lawyer,' their possibly valid constitutional claims will never be heard in any court." *Id.* at 487.

Where an inmate alleges an isolated or episodic denial of judicial access, that inmate should be required to demonstrate actual prejudice—*i.e.*, that the challenged denial

[15] The court of appeals stated that "it is the State's burden to provide meaningful access and to demonstrate that its chosen method is adequate." Pet. App. 5a (correct in original). If, by that language, the court meant to place on the defendants the burden of demonstrating the *absence* of a constitutional violation, it was mistaken. See, *e.g.*, *Metropolitan Casualty Ins. Co.* v. *Brownell*, 294 U.S. 580, 584 (1935) ("the burden of establishing the unconstitutionality of a statute rests on him who assails it"); *Wygant* v. *Jackson Bd. of Educ.*, 476 U.S. 267, 277-278 (1986) (plurality) (same). The questions presented by the petition, however, do not turn on disputed factual findings. We do not believe, therefore, that the burden of proof employed below is pertinent to this Court's decision.



actually had, or is about to have, an adverse effect on the inmate's existing or putative constitutional claim. Here, as in *Avery*, however, the district court identified a systemic failure by prison officials to provide meaningful access to substantial components of the inmate population. The court's finding that respondents sought to, but could not, utilize petitioners' system to research, prepare, or file meaningful legal papers (*e.g.*, Pet. App. 24a, 25a, 28a) suffices to establish a violation of respondents' access rights.[16]

[16] The district court expressly found that, "[a]s a result of the inability to receive adequate legal assistance, prisoners who are slow readers have had their cases dismissed with prejudice," and that "[o]ther prisoners have been unable to file legal actions." Pet. App. 25a. As to illiterate inmates, the district court's ruling satisfies even petitioners' overly stringent prejudice requirement.

There has been disagreement among the courts of appeals as to whether inmates must demonstrate "actual prejudice" in cases, like the present one, of systemic failure to provide meaningful access. Compare *DeMallory* v. *Cullen*, 855 F.2d at 448 (showing of actual prejudice required "only where minor or indirect limitations on access to courts are alleged"); *Peterkin* v. *Jeffes*, 855 F.2d 1021, 1041 (3d Cir. 1988) (actual prejudice standard applies only to "ancillary features" of court access systems, not to cases "directly involving prisoners' access to legal knowledge"); and *Chandler* v. *Baird*, 926 F.2d 1057, 1063 (11th Cir. 1991) (dicta indicating that a showing of prejudice should not be required in class actions where the challenge "is systemic" or "go[es] to the heart of any meaningful access to libraries, counsel, or courts") with *Crawford-El* v. *Britton*, 951 F.2d 1314, 1322 (D.C. Cir. 1991) (deprivation must be linked to an "adverse litigation effect"), cert. denied, 113 S. Ct. 62 (1992). The substantial majority of circuits addressing the question have held that, although a showing of prejudice is required where an inmate alleges episodic or minor denials of court access, such a showing is not required in cases of systemic failure. See Pet. App. 41a (citing *Sands* v. *Lewis*, 886 F.2d 1166, 1171 (9th Cir. 1989)). The court of appeals in this case declined to address the question of

## II. THE FEDERAL BUREAU OF PRISONS' ACCESS PROCEDURES ILLUSTRATE ONE METHOD OF PROVIDING CONSTITUTIONALLY ADEQUATE COURT ACCESS TO DIVERSE INMATE POPULATIONS

In the two decades since the *Bounds* decision, the Federal Bureau of Prisons (BOP) has developed a system of policies, materials, and services designed to facilitate judicial access by federal inmates. Through the availability of library access, inmate assistance, and self-help materials, BOP provides meaningful access to all categories of BOP inmates, while accommodating each institution's security, administrative, and fiscal concerns. BOP's approach to the access right is not the only method of satisfying the access obligation, nor are any particular BOP access policies constitutionally required; the "intricacies and range of options are of sufficient complexity that state legislatures and prison administrators must be given 'wide discretion' to select appropriate solutions." *Murray* v. *Giarratano*, 492 U.S. at 14 (Kennedy, J., concurring in the judgment) (quoting *Bounds* v. *Smith*, 430 U.S. at 833). However, BOP's legal access system provides one effective method of accommodating inmates' interests as well as legitimate correctional concerns. See *Turner* v. *Safley*, 482 U.S. at 93 (considering, *inter alia*, BOP practices and policies in determining whether feasible alternatives to state prison's inmate correspondence restrictions existed); *Procunier* v. *Martinez*, 416 U.S. 396, 414 n.14 (1974) ("While not necessarily controlling, the policies followed at other well-run institutions would be relevant to a determination of the need for a particular type of restriction.").

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"actual injury," concluding that that issue was "not now before [it]." Pet. App. 6a n.3.



BOP maintains a system of approximately 250 "main," "satellite camp," and "basic" law libraries to ensure that inmates in its 81 institutions are afforded meaningful access to the courts. See generally 28 C.F.R. 543.10-543.16 ("Inmate Legal Activities"). Each BOP institution is required to maintain a main law library that contains, among other things, federal reporters, federal statutes and rules of procedure, federal regulations, BOP program statements, treatises, self-help manuals, forms, *Shepard's Citations*, and Spanish/English dictionaries. Satellite camp and basic law libraries contain the most commonly used materials from the larger main library collections, and may request other materials from the larger collections when necessary.

Under BOP regulations, "[w]ith consideration of the needs of other inmates and the availability of staff and other resources, the Warden shall provide an inmate confined in disciplinary segregation or administrative detention a means of access to legal materials, along with an opportunity to prepare legal documents." 28 C.F.R. 543.11(j). BOP inmates who are denied physical access to the main law library due to security or other concerns may utilize the basic or satellite camp libraries to perform preliminary research, and then may request additional materials from the main law library. Requests for additional materials are ordinarily made through an "Inmate Request to Staff Member" form, and are generally filled by the institution's Education Department staff within a few working days of the request—although the volume of inmate demands in light of staffing resources may lengthen the time in particular cases. While some facilities provide inmates with the requested volumes, others provide photocopies of the materials to the inmate. Inmates may keep a reasonable quantity of personal legal

material in their living quarters, although the warden may limit the amount kept, based on safety or housekeeping concerns. See 28 C.F.R. 543.11(a) and (j).

The Central Office Librarian, the Supervisor of Education, and their respective staffs are responsible for the system-wide coordination of library services. Institutions ordinarily have inmate law clerks on duty to provide assistance with materials and to answer general questions.

Absent special security concerns, inmates can and do assist each other in performing legal research and preparing legal documents. 28 C.F.R. 543.11(f).[17] Inmate law clerks provide assistance to other inmates in utilizing library materials and, in some institutions, aid in the preparation of legal documents.[18] In addition, BOP staff

[17] In eight institutions BOP has established formal legal aid programs, which are operated in conjunction with legal organizations and law schools. Those programs provide inmates with an array of legal services, including the preparation of habeas corpus petitions and civil rights claims. See 28 C.F.R. 543.15(a) (providing that such programs "[are] expected to provide a broad range of legal assistance to inmates," and that "[s]taff shall allow these programs generally to operate with the same independence as privately retained attorneys"). Where such programs are in effect, BOP regulations permit wardens to impose restrictions on inmate-to-inmate assistance.

[18] As a result of the decision in *Knop* v. *Johnson*, *supra* (requiring the Michigan Department of Corrections to provide trained inmate assistants to illiterate and non-English speaking inmates), BOP has established a pilot program within the Sixth Circuit, under which inmate law clerks are trained and specifically assigned to assist inmates who are illiterate, have limited mental capacities, or do not speak English, in researching and preparing legal documents. BOP selects inmate law clerks for that program based on the applicant's education, prior legal research experience, language and writing skills, and projected release date. Inmates applying for law clerk positions are required to study a self-help manual and pass a written training



members frequently refer inmates to outside legal organizations, provide inmates with form pleadings furnished by local courts, answer questions about BOP policy, and facilitate attorney-client visitation.

Illiterate and non-English speaking inmates have their court access needs met through a combination of these methods at different BOP facilities.[19] Assistance from fellow inmates and referral to resources that may be available in the community are the primary means employed. In addition, BOP institutions evaluate an inmate's English language skills when the inmate enters the facility. They also provide general education programs to poorly educated inmates, in order to improve those inmates' literacy and other skills. BOP provides mandatory instruction in literacy skills and English as a second language for illiterate and non-English speaking inmates. 18 U.S.C. 3624(f) (Supp. V 1993).[20]

examination. Inmates in need of assistance may request the aid of an inmate law clerk through an "Inmate Request to Staff Member" form, and a specific time is designated by prison authorities for the inmate to meet with the law clerk. This approach is one constitutionally permissible method to meet the access needs of these prisoners; we believe that the methods employed in other BOP facilities also satisfy the requirements of the Constitution.

[19] Approximately 9.5% of the BOP inmate population is non-English speaking. Bilingual BOP staff and inmates provide assistance to non-English speaking prisoners in day-to-day matters. BOP institutional rules are routinely translated into Spanish by the Central Office, and translations of rules into other languages are obtained as necessary, based on the characteristics of each facility's population.

[20] There are currently three class actions pending against the Immigration and Naturalization Service (INS) in which detained aliens allege that they have been denied access to the courts. See *Kattola* v. *Reno*, No. CV 94-4859KN (C.D. Cal.); *CARECEN* v. *Reno*, No. CV 93-4162KN (C.D. Cal.); *Imasuen* v. *Moyer*, No. 91 C 5425 (N.D. Ill.). Those cases raise issues that may be substantially different from

## III. THIS COURT SHOULD BE GUIDED BY TRADITIONAL EQUITABLE PRINCIPLES IN DETERMINING WHETHER THE REMEDY ADOPTED IN THIS CASE WAS AN ABUSE OF DISCRETION

We leave to the parties the fact-specific question whether the district court abused its discretion in ordering the particular relief contained in its injunction in this case. We note, however, several general considerations

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those involved in this case. The constitutional principles applicable here do not necessarily apply to aliens detained under the authority of the federal immigration laws. See, *e.g.*, *Reno* v. *Flores*, 113 S. Ct. 1439, 1449 (1993) ("[I]n the exercise of its broad power over immigration and naturalization, Congress regularly makes rules that would be unacceptable if applied to citizens.") (internal quotation marks omitted); *Shaughnessy* v. *United States ex rel. Mezei*, 345 U.S. 206, 212 (1953) ("Whatever the procedure authorized by Congress is, it is due process as far as [excludable aliens are] concerned."); *INS* v. *Lopez-Mendoza*, 468 U.S. 1032, 1038-1039 (1984) (various protections that are applicable in criminal proceedings do not apply in deportation proceedings because such proceedings are purely civil). INS detainees are also often in a significantly different position with regard to court access from the position of inmates imprisoned as the result of criminal convictions. The legal issues concerning their immigration status are decided in an administrative, not a judicial, forum, and they routinely appear before an immigration judge within a matter of weeks after their detention, at which time an interpreter is provided. The average length of detention of an INS detainee is only about 27 days and, unlike most convicted inmates, many detainees are eligible for release on bond during immigration proceedings. In addition, many INS detainees are dispersed in local jails for short-term detention. Because of the relatively brief duration of most INS detentions, training detainees to serve as legal assistants is not a viable opition. INS detains over 80,000 individuals over the course of each year; at any one time, 7,000 to 7,500 are in INS custody. INS detainees speak more than 100 different native languages and dialects, and a great many are not English-literate.



that, in our view, should guide this Court in evaluating the district court's remedial order.

"Running a prison is an inordinately difficult undertaking that requires expertise, planning, and the commitment of resources, all of which are peculiarly within the province of the legislative and executive branches of government." *Turner* v. *Safley*, 482 U.S. at 84-85. Where state prison systems are involved, moreover, "federal courts have * * * additional reason to accord deference to the appropriate prison authorities." *Id.* at 85; see also *Procunier* v. *Martinez*, 416 U.S. at 405. "Once a right and a violation have been shown," however, "the scope of a district court's equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies." *Swann* v. *Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 15 (1971). Although the remedy imposed must "be related to the condition alleged to offend the Constitution," *Missouri* v. *Jenkins*, 115 S. Ct. 2038, 2049 (1995) (internal quotation marks omitted), courts may, under certain circumstances, impose remedial obligations that exceed minimum constitutional requirements.

Because a central goal of equitable relief is to restore the victims of unconstitutional conduct "to the position they would have occupied in the absence of such conduct," *Milliken* v. *Bradley*, 418 U.S. 717, 746 (1974) (*Milliken I*); see also *Milliken* v. *Bradley*, 433 U.S. 267, 281 (1977) (*Milliken II*), a remedial decree may impose affirmative obligations designed to achieve that goal, *id.* at 281-282. In addition, the district courts have both the power and the duty to consider recalcitrance and delay on the part of a party in fashioning a complete and effective remedy. A district court's experience with a problem and knowledge of local conditions warrant

substantial deference, *Hutto* v. *Finney*, 437 U.S. 678, 688 (1978), and may justify a prophylactic response to a recurring or intractable concern, see *id.* at 687 ("taking the long and unhappy history of the litigation into account, the [district] court was justified in entering a comprehensive order to insure against the risk of inadequate compliance"); see also *United States* v. *Paradise*, 480 U.S. 149, 176 (1987) (plurality opinion).

Finally, state authorities "have primary responsibility for curing constitutional violations." *Hutto* v. *Finney*, 437 U.S. at 687 n.9. Accordingly, once a violation is identified, local officials should be given an opportunity to propose and implement an effective remedy. *Milliken II*, 433 U.S. at 281. If, however, "[those] authorities fail in their affirmative obligations * * *, judicial authority may be invoked." *Swann* v. *Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. at 15. Where the constitutional violation at issue may be remedied in a variety of ways, the district court, upon the State's default, is entitled to select and implement a specific remedial scheme.



## CONCLUSION

With respect to the issues discussed herein, the judgment of the court of appeals should be affirmed.

Respectfully submitted.

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